IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1655 OF 2007

Sunil Bhalchandra Sonawane ..Petitioner
Vs.
Surjit Singh Chandok ..Respondent

Ms. Sharmila Deshmukh for petitioner.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : September 04, 2007.

P.C.:

1. Heard Ms. Deshmukh the learned counsel for the petitioner who is impleaded as an accused in C.C. No.14/S/2000 filed for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The amount of the dishonoured cheque is Rs.3,00,000/-.

2. During the trial of the complaint, the complainant examined himself and thereafter the accused, present petitioner, entered the witness box. His cross-examination was completed and in addition, one Shri S.R. Avsare was examined as an additional witness in defence. Thereafter on or about 30/8/2007

the petitioner filed an application praying for issuance of summons to one Mr. Dunda Narayan Bhise, resident of Shahpur and this application came to be rejected by the learned Judge of the trial court and hence this petition.

3. The depositions brought on record indicate that the complainant was cross-examined on his affidavit-in-examination-in-chief on 1/3/2007 and it was concluded on 5/6/2007. By an order dated 18/5/2007 the learned Metropolitan Magistrate discharged the accused for the offence punishable under Section 420 of IPC and proceeded to frame the charge under Section 138 of the Negotiable Instruments Act, 1881 against the accused. Thereafter second witness of the complainant was examined. The statement of the accused under Section 313 of Cr.P.C. was recorded on or about 2/7/2007. In the affidavit in evidence by way of examination-in-chief filed by the accused nowhere reference to any involvement of Mr.Bhise in the transaction which was the subject matter of the dishonoured cheque has been made and obviously the application to call Mr.Bhise as a

witness by issuing summons was for delaying the trial of the complaint. The learned Metropolitan Magistrate referred to the provisions of Sections 101, 102 and 103 of the Evidence Act while rejecting the application. It is well established that the burden to prove the presumption of the requirements of Section 138 of the Negotiable Instruments Act, 1881 is on the complainant and the accused is at liberty to discharge this burden either by cross-examination of the complainant or by examining himself or the witnesses. The accused has examined himself and examined one more witness on his behalf. In the evidence of the accused himself there is no reference to any role attributed to Mr.Bhise in the subject transaction and, therefore, he could not be termed as relevant witness by any stretch of imagination.

4. The view taken by the trial court in rejecting the application, therefore, does not call for any interference under Article 227 of the Constitution.

5. Petition is rejected summarily.

(B.H. Marlapalle,J.)